

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MERIDEE ALBRECHT,) Case No. 2:09-cv-01694-JCC
Plaintiff,)
vs.) **PLAINTIFF'S MOTION TO DISMISS**
RENTON COLLECTIONS, INC.,) **AND/OR STRIKE DEFENDANT'S**
Defendant.) **COUNTERCLAIMS**
)
)
) **JURY TRIAL DEMANDED**
)

I. STATEMENT OF FACTS.

On November 30, 2009 Plaintiff filed her original Complaint against Defendant alleging violations of the federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692 *et seq.*, violations of the Revised Code of Washington, Chapter 19.16, and for common law invasion of privacy. (Document 1).

On January 15, 2010 Defendant filed its Answer to Plaintiff's Complaint. (Document 6). Defendant included in its Answer to Plaintiff's Complaint two (2) separate counterclaims. (Document 6). Defendant's first counterclaim reads:

- 1 6. Defendant RCI is a Washington corporation in good
- 2 standing, has paid all fees and has satisfied all
- 3 bonding and licensing requirements as a collection
- 4 agency.
- 5 7. Plaintiff is a single woman residing in King County,
- 6 Washington.
- 7 8. Plaintiff became indebted to Valley Orthopedic
- 8 Associates for medical care, goods and services as
- 9 follows:
- 10 (a) \$614.08 on 6/2/2008. Defendant made a
- 11 payment of \$50.00 and the principal balance
- 12 of this debt is now \$564.08. Interest to date at
- 13 12% per annum is \$98.94;
- 14 (b) \$98.00 on 6/9/2008. Interest to date at 12% per
- 15 annum is \$15.78;
- 16 (c) \$10.00 on 5/16/2008. Interest to date at 12%
- 17 per annum is \$1.67.
- 18 9. Payment for these services has been demanded
- 19 without avail and the debts remain unpaid.
- 20 Plaintiff does not deny the validity of the above
- 21 entitled allegations in Sections 8(a), (b), and (c) of
- 22 this Counterclaim, by virtue of her own Factual
- 23 Allegations in the Complaint Section IV, 7(b).
- 24 10. The claims of Valley Orthopedic Associates have
- 25 been duly assigned to RCI for collection.

26 (See Document 6).

27 Defendant's second counterclaim reads:

- 28 11. Plaintiff's action is not well grounded in fact, is not
- warranted by existing law, is interposed for improper
- purposes such as harassment and to cause

1 unnecessary delay and needless increase in the cost
 2 of litigation, and the factual contentions are not
 3 warranted on the evidence, nor are they based on
 reasonable belief.

4 (See Document 6).

5 **II. DISTRICT COURTS CONSISTENTLY REFUSE SUPPLEMENTAL
 6 JURISDICTION OVER COUNTERCLAIMS TO COLLECT
 7 UNDERLYING DEBTS IN ACTIONS FILED PURSUANT TO THE
 8 FDCPA BASED UPON “COMPELLING REASONS”, AND BECAUSE
 9 SUCH COUNTERCLAIMS ARE LIKELY TO “SUBSTANTIALLY
 PREDOMINATE” OVER CLAIMS FOR WHICH THE DISTRICT
 COURTS MAINTAINS ORIGINAL JURISDICTION.**

10 “It is a fundamental precept that federal courts are courts of limited jurisdiction.”

11 *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978). Federal courts have
 12 original jurisdiction over all civil actions “arising under the Constitution, laws, or
 13 treatises of the United States” and in all civil actions where complete diversity of
 14 citizenship exists and the amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1331,
 15 1332. Here, while original jurisdiction exists over Plaintiff’s claims under the FDCPA,
 16 original jurisdiction does not exist over Defendant’s state-law counterclaims. Diversity
 17 jurisdiction cannot provide an independent jurisdictional basis for Defendant’s
 18 counterclaims because the amount Defendant is claiming is not over \$75,000, as 28
 19 U.S.C. § 1332 requires. The only basis for jurisdiction over Defendant’s counterclaims
 20 is that found under 28 U.S.C. § 1367, the federal statute providing for supplemental
 21 jurisdiction. 28 U.S.C. §1367(a) (granting federal courts supplemental jurisdiction over
 22 state law counterclaims “that are so related to claims in the action within such original
 23 Plaintiff’s Motion to Dismiss Defendant’s Counterclaims-3
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 28

1 jurisdiction that they form part of the same case or controversy under Article III of the
 2 United States Constitution.”).

3 Notwithstanding the existence of supplemental jurisdiction over a counterclaim,
 4 “district courts may decline to exercise supplemental jurisdiction over a claim under
 5 subsection (a) if - (1) the claim raises a novel or complex issue of State law, (2) the
 6 claim substantially predominates over the claim or claims over which the district court
 7 has original jurisdiction, (3) the district court has dismissed all claims over which it has
 8 original jurisdiction, or (4) in exceptional circumstances, there are other compelling
 9 reasons for declining jurisdiction.” 28 U.S.C. § 1337(c). Significant, courts throughout
 10 the Ninth Circuit continually decline supplemental jurisdiction over a debt collector’s
 11 counterclaim relating to the underlying debt in actions filed pursuant to the FDCPA.
 12 Generally, district courts have found not only that counterclaims to collect an
 13 underlying debt do not involve the same controversy, the same evidence, or the same
 14 federal law and policy, but that refusal to decline supplemental jurisdiction over such
 15 counterclaims would impede the expeditious enforcement of the policies giving rise to
 16 enactment of the FDCPA and would have a chilling effect on the exercise of consumers’
 17 rights under the FDCPA. *See Campos v. W. Dental Servs., Inc.*, 404 F. Supp. 2d 1164
 18 (N.D. Cal 2005) (declining to exercise its discretion to hear counterclaim on contract
 19 and noting that refusal to dismiss collection counterclaim would chill consumers’ right
 20 under the FDCPA); *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (E.D. Cal.
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Plaintiff’s Motion to Dismiss Defendant’s Counterclaims-4

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1 2005) (fining the district court maintained supplemental jurisdiction over the debt
 2 collector's counterclaims for the underlying debt, but refusing to exercise supplemental
 3 jurisdiction because of the chilling effect that it would have on consumers' rights to
 4 pursue remedy under the FDCPA); *see also Cabrera v. Courstey Auto, Inc.*, 192 F.
 5 Supp. 2d 1012 (D. Neb. 2002) (dismissing counterclaim and noting by analogy to a case
 6 filed pursuant to the FDCPA that a counterclaim for the underlying debt in a Truth in
 7 Lending Act action was permissive and not compulsory).
 8

9 In the instant matter, Defendant's counterclaims are not compulsory, but rather
 10 permissive. Accordingly, because compelling reasons exist for declining supplemental
 11 jurisdiction, and for reason that Defendant's counterclaims are likely to substantially
 12 predominate over Plaintiff's claims for which this Court maintains original jurisdiction,
 13 Plaintiff requests that this Court dismiss and/or strike Defendant's counterclaims.
 14

15 **A. Defendant's Counterclaim Is Not A Compulsory Counterclaim, But
 16 Rather Permissive.**

17 All counterclaims that are not compulsory are "permissive." Permissive
 18 counterclaims are claims that do "not aris[e] out of the transaction or occurrence that is
 19 the subject matter of the opposing party's claim." Fed. R. Civ. P. 13(b). In determining
 20 if the counterclaim is compulsory, the Ninth Circuit applies a "logical relationship test,"
 21 where the court "analyze[s] whether the essential facts of the various claims are so
 22 logically connected that considerations of judicial economy and fairness dictate that all
 23 the issues be resolved in one lawsuit." *Pochiro v. Prudential Ins. Co. of Amer.*, 827 F.
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1 2d 1246, 1249 (9th Cir.1987), quoting *Harris v. Steinem*, 571 F. 2d 119, 123 (2d
 2 Cir.1978)).

3 “[B]reach of contract counterclaims for the underlying debt are not “logically
 4 connected” to the unfair-collection-practices claim, despite that they both relate to the
 5 same debt.” *Sparrow v. Mazda American Credit*, 385 F. Supp. 2d 1063 (E.D. Cal.
 6 2005), citing *Leatherwood v. Universal Bus. Serv. Co.*, 115 F.R.D. 48 (W.D.
 7 N.Y.1987); *Hart v. Clayton-Parker and Assoc., Inc.*, 869 F. Supp. 774 (D.Ariz.1994).
 8 “While the debt does provide some factual connection between the claims, because they
 9 arise out of the debt, the legal issues and evidence relating to the claims are considered
 10 sufficiently distinct so as not to meet the ‘logical relationship’ test.” *Id.*
 11

12 In particular, the district court for the Western District of New York stated:
 13

14 The [FDCPA claim] relates to the application of the FDCPA
 15 and focuses on a narrow realm of facts concerning the use of
 16 abusive, deceptive and/or unfair debt collection practices by
 17 the defendants. On the other hand, [the defendant’s]
 18 counterclaim encompasses a private duty under state law
 19 and requires a broad proof of facts establishing the existence
 20 and performance of a contract, the validity of the contract’s
 21 provisions, a breach of the contract by the plaintiff and
 22 monetary damages resulting from the breach. The claim and
 23 counterclaim are, of course, “offshoots” of the same basic
 24 transaction, but they do not represent the same basic
 25 controversy between the parties.
 26

27 * * *

28 [T]he FDCPA claim involves the enforcement of federal
 29 policy and federal statutory law concerning a debt
 30 collector’s conduct in collecting a debt. This claim does not
 31 concern any obligations created by the underlying debt. In

1 contrast, the counterclaim alleges that the plaintiff has
 2 defaulted on a private contract governed by state law.
 3

4 *Leatherwood*, 115 F.R.D. at 49-50.
 5

6 **1. Defendant's Counterclaim Does Not Arise From The Same Set
 7 Of Operative Facts As Plaintiff's Action Under The FDCPA.**

8 Defendant's counterclaim to collect the subject debt does not arise out of the
 9 same aggregate set of operative facts as Plaintiff's action filed pursuant to the FDCPA.
 10 Defendant's counterclaims are based on Plaintiff's alleged indebtedness to Valley
 11 Orthopedic Associates for medical care, goods and services. (See Document 6). In
 12 particular, Defendant notes that “[p]ayment for these services has been demanded
 13 without avail and the debts remain unpaid ... [t]he claims of Valley Orthopedic
 14 Associates have been duly assigned to RCI for collection.” (Document 6). Contrary,
 15 Plaintiff's action invokes a statutory penalty designed to enforce federal policy
 16 implemented to protect consumers from unscrupulous collectors by prohibiting unfair or
 17 unconscionable collection methods, conduct which harasses, oppresses or abuses any
 18 debtor, and any false, deceptive or misleading statements, in connection with the
 19 collection of a debt. Plaintiff's action under the FDCPA is based on the commission of
 20 prohibited debt collection practices.
 21

22 While Defendant's action to collect the underlying debt and Plaintiff's claim for
 23 violations of the FDCPA unavoidably touch upon one another, the two claims bear no
 24 logical relation to one another. Mere overlap of issues raised in both cases does not
 25

1 denote that Defendant's action to collect a debt arises from the same transaction or
 2 occurrence as does Plaintiff's action to enforce federal policy regulating the practices
 3 for the collection of debts. Defendant's counterclaims involve only a private loan
 4 contract governed in part by state law. In short, Plaintiff's action involves not the loan
 5 itself, but the use of unfair methods to collect it. The sole connection between
 6 Plaintiff's action and Defendant's counterclaims is that of the initial execution of the
 7 loan document.¹

8

9

10 **2. Rights Or Interests Potentially Established By Defendant's
 11 Counterclaims Neither Would, Nor Could, Be Destroyed Or
 12 Impaired By Plaintiff's Action.**

13 With regard to Defendant's counterclaims and Plaintiff's action under the
 14 FDCPA, the filing of one action does not "activate" the filing of the other in a
 15 circumstance in which the second action might otherwise remain dormant. Defendant
 16 can pursue a collection suit for the recovery of a consumer debt whether Plaintiff
 17 complains about its collection practices or not. The two actions do not depend on each
 18 other.

20

21

22 ¹ Such a connection has been deemed so insignificant that compulsory adjudication of actions identical to that
 23 brought by Plaintiff and Defendant is not required. *See Peterson v. United Accounts, Inc.*, 638 F.2d 1134 (8th Cir.
 24 1981) (holding that an action under the federal Fair Debt Collection Practices Act is not a compulsory
 25 counterclaim to an action to collect the debt); *Egge v. Healthspan Servs. Co.*, 115 F. Supp. 2d 1126 (D.
 26 Minn.2000) (recognizing that "[m]any courts note that no court has found that an FDCPA suit was a compulsory
 27 counterclaim to a debt collection action"); *Maddox v. Ky. Fin. Co.*, 736 F. 2d 380 (6th Cir.1984) (holding that a
 28 claim for an underlying debt is not a compulsory counterclaim to an action under the federal Truth in Lending
 Act); *Whigum v. Heilig-Meyers Furniture, Inc.*, 682 So. 2d 643 (Fla. 1st DCA 1996) (holding that an action to
 collect debt for the purchase of consumer goods is not a compulsory counterclaim to an action under the FCCPA);

3. Defendant's Counterclaim and Plaintiff's Action Under The FDCPA And Do Not Involve Infringement Of The Same Right.

Defendant's counterclaim is based, it seems, in contract. Stated otherwise, Defendant's counterclaims assert a demand for relief as it relates to Plaintiff's alleged failure to pay in full to a third party an amount of \$614.08. (See Document 6). Defendant's counterclaims, although not specifically stated, appear to have allegedly arisen against the backdrop of Washington state law. (See Document 6).

The FDCPA is a comprehensive statute which prohibits a catalog of activities in connection with the collection of debts by third parties. *See* 15 U.S.C. §1692 et seq. The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. §1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, both generally and in a specific list of disapproved practices, and prohibit harassing and abusive tactics, both generally and in a specific list of disapproved practices.

In enacting the FDCPA, the United States Congress found that “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692(a). Congress additionally found existing laws and procedures for redressing

1 debt collection injuries to be inadequate to protect consumers. 15 U.S.C. § 1692(b). It
 2 is the express purpose of the FDCPA to “eliminate abusive debt collection practices by
 3 debt collectors, to insure that debt collectors who refrain from using abusive debt
 4 collection practices are not competitively disadvantaged, and to promote consistent
 5 State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e).

7 Accordingly, the FDCPA broadly enumerates several practices considered
 8 contrary to its stated purpose, and forbids debt collectors from taking such action. The
 9 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector
 10 may not engage in any conduct the natural consequence of which is to harass, oppress,
 11 or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d.
 12 Second, a “debt collector may not use any false, deceptive, or misleading representation
 13 or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. And third,
 14 a “debt collector may not use unfair or unconscionable means to collect or attempt to
 15 collect any debt.” 15 U.S.C. § 1692f. Simply, designed to protect consumers from
 16 unscrupulous collectors, whether or not there exists a valid debt, the FDCPA broadly
 17 prohibits unfair or unconscionable collection methods, conduct which harasses,
 18 oppresses or abuses any debtor, and any false, deceptive or misleading statements, in
 19 connection with the collection of a debt. *Baker v. G.C. Services Corp.*, 677 F. 2d 775
 20 (9th Cir. 1982); *Heintz v. Jenkins*, 514 U.S. 291 (1995); *McCartney v. First City Bank*,
 21 970 F.2d 45 (5th Cir. 1992).

27 Plaintiff's Motion to Dismiss Defendant's Counterclaims-10
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1 Defendant's counterclaims and Plaintiff's action filed pursuant to the FDCPA
 2 raise different legal and factual issues governed by different bodies of law. The rights
 3 and obligations of Plaintiff and Defendant with respect to their respective claims and
 4 counterclaims hinge on different facts and different legal principles. Defendant's
 5 counterclaims and Plaintiff's action do not involve infringement of the same right.
 6

7 **B. Declining To Exercise Discretion Over Defendant's Counterclaim Is
 8 Supported By Public Policy, The Rationale Underlying The FDCPA,
 9 And The Potential That Defendant's Counterclaim May
 10 Substantially Predominate Over Plaintiff's Original Federal Claim.**

11 The district courts may decline to exercise supplemental jurisdiction over a claim
 12 under subsection 28 U.S.C. §1367(a) if:

13 (1) the claim raises a novel or complex issue of State law,
 14 (2) the claim substantially predominates over the claim or
 15 claims over which the district court has original jurisdiction,
 16 (3) the district court has dismissed all claims over which it
 17 has original jurisdiction, or
 18 (4) in exceptional circumstances, there are other compelling
 19 reasons for declining jurisdiction.

20 28 U.S.C. §1367(c).

21 Even if supplemental jurisdiction exists over a defendant's counterclaim, a
 22 district court may decline to exercise that jurisdiction. In the matter at hand, strong
 23 policy reasons favor declining the exercise of supplemental jurisdiction over
 24 Defendant's counterclaims. What's more, Defendant's counterclaims may

1 "substantially predominate over the claim or claims over which the district court has
 2 original jurisdiction."

3 **1. Allowing A Debt Collector To Bring An Action For The
 4 Underlying Debt In A Case Brought Under The FDCPA May
 5 Deter Litigants From Pursuing Their Rights Under The
 6 FDCPA.**

7 A major purpose of the FDCPA is to protect individuals from unfair debt
 8 collection practices regardless of whether the individual actually owes a debt. *Baker v.*
 9 *G.C. Services Corp*, 677 F.2d 775, 777 (9th Cir. 1982) ("The [FDCPA] is designed to
 10 protect consumers who have been victimized by unscrupulous debt collectors,
 11 regardless of whether a valid debt actually exists."); *McCartney v. First City Bank*, 970
 12 F.2d 45, 47 (5th Cir. 1992) ("The Act makes debt collectors liable for various 'abusive,
 13 deceptive, and unfair debt collection practices' regardless of whether the debt is
 14 valid."); *Keele v. Wexler* , 149 F. 3d 589, 594 (7th Cir. 1998) ("[T]he plaintiff who
 15 admittedly owes a legitimate debt has standing to sue if the [FDCPA] is violated by an
 16 unprincipled debt collector.").

17 Accordingly:

18 To allow a debt collector defendant to seek to collect the
 19 debt in the federal action to enforce the FDCPA might well
 20 have a chilling effect on persons who otherwise might and
 21 should bring suits such as this. Moreover, it would involve
 22 this Court in questions of no federal significance. Given the
 23 remedial nature of the FDCPA "and the broad public policy
 24 which it serves, federal courts should be loath to become
 25 immersed in the debt collection suits of ... the target of the

1 very legislation under which" a FDCPA plaintiff states a
 2 cause of action.

3 *Leatherwood*, 115 F.R.D. at 50, quoting *Roberts v. Nat'l Sch. of Radio & Television*
 4 *Broadcasting*, 374 F.Supp. 1266, 1271 (N.D. Ga.1974)).

5 **2. Defendant's Counterclaims May Substantially Predominate
 6 Over The Claim Or Claims Over Which The District Court
 7 Has Original Jurisdiction.**

8 Defendant's counterclaim to collect the alleged underlying debt encompasses a
 9 private duty under state law and requires a broad proof of facts establishing the
 10 existence and performance of a contract, the validity of the contract's provisions, a
 11 breach of the contract by the plaintiff, and monetary damages resulting from the breach.

12 *Leatherwood*, 115 F.R.D. at 49-50. Defendant, as the party on whom the burden of
 13 proof rests with regard to its counterclaims, must demonstrate, at the most basic level,
 14 the sufficiency of its evidence, standing to collect the alleged debt, specificity of a cause
 15 of action pursuant to which Defendant may properly seek to collect the alleged debt,
 16 and the lack of valid defense precluding its debt collection efforts. Potential defenses
 17 relating to debt collection actions include, but are not limited to, settlement or discharge
 18 of the alleged debt, mistake as to the identity of an alleged debtor, statutes of
 19 limitations, legal invalidity of an alleged debt, incapacity or legal incompetence, and
 20 lack of proof as to commercial reasonableness. Courts presiding over debt collection
 21 actions must also consider the potential for necessary review of post-judgment actions
 22 ancillary to debt collection efforts such as wage garnishment.

23 Plaintiff's Motion to Dismiss Defendant's Counterclaims-13

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1 Adjudication of Defendant's counterclaims very well may be considerably more
2 time consuming than the adjudication of Plaintiff's straightforward claims for violation
3 of the FDCPA. As such, Defendant's counterclaims may substantially predominate
4 over Plaintiff's for which this Court maintains original jurisdiction. The same would
5 inevitably divert time from litigants in other cases patiently waiting in the queue for the
6 limited time of federal judges.

7
8 WHEREFORE, Plaintiff respectfully requests that this Court enter an order
9 dismissing and/or striking Defendant's counterclaims.

10
11 Dated this 30th day of November, 2009.

12
13
14 s/Jon N. Robbins
15 Jon N. Robbins, WSB#28991
16 WEISBERG & MEYERS, LLC
17 Attorney for Plaintiff

18
19 **CERTIFICATE OF SERVICE**

20 I certify that on the 2nd day of February, 2010, I electronically filed the
21 foregoing document through the Court's CM/ECF System and notice of said filing was
22 transmitted via electronic notification and by US Mail to:

23 Retacco Law Offices Inc., P.S.
24 30640 Pacific Hwy. S. Ste C-1
25 Federal Way, WA 98003

26 s/Jon N. Robbins

27 Plaintiff's Motion to Dismiss Defendant's Counterclaims-14

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